

### REMARKS/ARGUMENTS

Favorable reconsideration of the present application is respectfully requested.

Claims 11 and 14 have been amended responsive to the rejection under 35 U.S.C. § 112, which is believed to be moot. Claims 13-23 are therefore believed to be allowable.

Claims 11-12 were newly rejected under 35 U.S.C. §103 as being anticipated by Watanabe et al '925. However this is respectfully traversed.

Claim 11 recites in part that a positional relationship member and a guard cover are mounted to an upper rotating body via a radiator support. For example, the guide duct 29 and the guard cover 26 are mounted via the radiator support 22. Since the positional relationships for these elements is fixed by the radiator support 22 as a reference, space management amongst these elements is more easily accomplished.

Watanabe et al '925 discloses a working machine wherein the swiveling frame 4 of an upper swiveling body is provided with a beam 4F on which is mounted a fluid reservoir 13, an air duct 41 and a radiator 20. According to the Office Action, Watanabe et al '925 discloses a "positional relationship member" at 22b and a guard cover 6 which are mounted to an upper rotating body 4 via the beam ("radiator support") 4F.

However Applicants fail to find any support in Watanabe et al '925 for this assertion. Watanabe et al '925 discloses that the cover 6 is provided to cover the outer side of the swiveling frame 4 (col. 4, lines 47-48) but does not describe that it is mounted thereto via the beam ("radiator support") 4F. Additionally, the "positional relationship member" 22b is part of a partition plate 22.

[The] partition plate 22 *is provided on the swiveling frame 4*, around the sirocco fan 16. The partition plate 22 partitions the intake side of the sirocco fan 16, namely the intake port 17B of the fan casing 17, from the exhaust side of the radiator 20 and the oil cooler 21 and the engine 10. For this reason, the partition plate 22 is provided further up than the upper surface of the radiator 20, and enclosing the rear and left sides of the fan casing 17 of the sirocco fan 16. Specifically, the partition plate 22 substantially comprises a lateral plate 22A arranged at a rear side of the fan casing 17 and extending to

the left and right, and a longitudinal plate 22B arranged to the left side of the fan casing 17 and extending from the lateral plate 22A to the front. (Col. 6, lines 36-48; emphasis added).

Significantly, there is no description that the partition plate 22 is provided on the swiveling frame 4 via the beam ("radiator support") 4F. Applicants therefore respectfully submit that there is no basis in Watanabe et al '925 for the claimed positional relationship member and guard cover mounted to the upper rotating body via the radiator support, and so Claims 11-12 also define over this reference.

Applicants therefore believe that the present application is in a condition for allowance and respectfully solicit an early notice of allowability.

Respectfully submitted,

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